

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2012-000244-001 DT

08/24/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT  
K. Waldner  
Deputy

STATE OF ARIZONA

SETH W PETERSON

v.

MAXIMO EDUARDO VELA (001)

SCOTT MAASEN

REMAND DESK-LCA-CCC  
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

**Lower Court Case Number M-0751-TR-2011-005448.**

Defendant-Appellant Maximo Eduardo Vela (Defendant) was convicted in Scottsdale Municipal Court of driving under the influence. Defendant contends the trial court erred in denying his Motion To Suppress, which alleged his weaving and slow driving did not give the officer reasonable suspicion to stop his vehicle. For the following reasons, this Court affirms the judgment and sentence imposed.

**I. FACTUAL BACKGROUND.**

On March 8, 2011, Defendant was cited for driving under the influence, A.R.S. § 28-1381(A)(1) & (A)(2); and speed less than reasonable and prudent, A.R.S. § 28-701(E). Prior to trial, Defendant filed a Motion To Suppress alleging the officer did not have reasonable suspicion to stop his vehicle.

At the hearing on Defendant's motion, Officer David Stanley testified he was on duty on March 8, 2011, in the area of Scottsdale Road and Shea Boulevard, and that one of his duties was to investigate impaired drivers. (R.T. of Sep. 21, 2011, at 5-6, 27, 29.). At about 2:24 a.m., as he was headed east, he saw a vehicle headed west that appeared to be going less than the posted speed limit. (*Id.* at 6-10, 29.) He made a U-turn and determined the vehicle was going 35 mph in a 45 mph zone, which he considered not to be a reasonable and prudent speed. (*Id.* at 11-13, 25, 30.) While he was observing this vehicle, another vehicle had to change lanes to get around that vehicle. (*Id.* at 31.) When the posted speed dropped to 40 mph, the vehicle reduced its speed to 30 mph. (*Id.* at 13-14, 20, 31-32.) He also observed the vehicle "weaving in the lane," which he described as moving back and forth in a constant and consistent weave from the leftmost portion of the lane to the rightmost portion of the lane. (*Id.* at 23-24, 33.) He said the slow driving and weaving were both NHTSA cues of nighttime driving impairment. (*Id.* at 25, 28, 33-36.)

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Officer Stanley then initiated a traffic stop for driving at a speed less than reasonable and prudent, and for what he believed was impaired driving. (R.T. of Sep. 21, 2011, at 34–37.) He identified Defendant as the driver of the vehicle. (*Id.* at 37.)

After hearing the testimony from the witness and hearing arguments from counsel, the trial court found Defendant’s driving behavior gave Officer Stanley articulable reasonable suspicion to stop Defendant’s vehicle. (R.T. of Sep. 21, 2011, at 57–59.) The trial court therefore denied Defendant’s motion to suppress. (*Id.* at 59.)

The matter then proceeded to a jury trial. (R.T. of Sep. 22, 2011, at 62–64, 73.) The evidence included testimony that a test of Defendant’s blood showed BAC readings of 0.112 and 0.113. (*Id.* at 141–43, 252, 267–68.) After hearing the testimony, arguments, and instructions, the jurors found Defendant guilty of the (A)(2) (BAC > 0.08) charge, and not guilty of the (A)(1) (driving while under influence and impaired) charge. (R.T. of Sep. 23, 2011, at 426.) The trial court found Defendant not responsible for the speed less than reasonable and prudent charge. (*Id.* at 427.) The trial court subsequently imposed sentence. (R.T. of Nov. 11, 2011, at 430–31.) On that same day, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE TRIAL COURT ABUSE ITS DISCRETION IN FINDING THE OFFICER HAD  
REASONABLE SUSPICION TO STOP DEFENDANT’S VEHICLE.

Defendant contends the trial court abused its discretion in finding the officer had reasonable suspicion to stop his vehicle. In reviewing a trial court’s ruling on a motion to suppress, an appellate court is to defer to the trial court’s factual determinations, including findings based on a witness’s credibility and the reasonableness of inferences the witness drew, but is to review de novo the trial court’s legal conclusions. *State v. Moody*, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 75, 81 (2004); *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Olm*, 223 Ariz. 429, 224 P.3d 245, ¶ 7 (Ct. App. 2010). A police officer has reasonable suspicion to detain a person if there are articulable facts for the officer to suspect the person is involved in criminal activity or the commission of a traffic offense. *State v. Lawson*, 144 Ariz. 547, 551, 698 P.2d 1266, 1270 (1985). The Arizona statutes provide that a peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer’s presence. A.R.S. § 28–1594; A.R.S. § 13–3883(B).

In the present case, Officer Stanley testified Defendant was “weaving in the lane,” which he described as moving back and forth in a constant and consistent weave from the leftmost portion of the lane to the rightmost portion of the lane. (R.T. of Sep. 21, 2011, at 23–24, 33.) He also testified Defendant was driving below the posted speed limit, and that both of these were NHTSA cues of nighttime driving impairment. (*Id.* at 11–14, 20, 25, 28, 30–36.) In this context of weaving, the Arizona courts have said:

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The fourth amendment to the United States Constitution guarantees the right to be secure against unreasonable search and seizure. This guarantee requires arrests to be based on probable cause and permits limited investigatory stops based only on an articulable reasonable suspicion of criminal activity. Such stops are permitted although they constitute seizures under the fourth amendment. Officer Hohn testified that he stopped Blake because Blake's car had been weaving in its lane, and he suspected the driver to be under the influence of alcohol. We find that Blake's weaving was a specific and articulable fact which justified an investigative stop.

*State v. Superior Court (Blake)*, 149 Ariz. 269, 273, 718 P.2d 171, 175 (1986) (citations omitted).

The stop was based upon a particularized and founded suspicion by Officer Hernandez. Officer Hernandez testified that appellant was driving close to the median barrier on the freeway and was weaving inside the lane. Believing appellant to be tired or intoxicated and in violation of a law which requires vehicles to travel within one lane, she stopped appellant. . . . [T]he foregoing facts were sufficient to give rise to the officer's particularized and founded suspicion of criminal activity.

*State v. Winter*, 146 Ariz. 461, 466–67, 706 P.2d 1228, 1233–34 (Ct. App. 1985), *abrogated on other grounds*, *State v. Kamai*, 184 Ariz. 620, 623–24, 911 P.2d 626, 629–30 (Ct. App. 1995). In the present case, Officer Stanley testified he stopped Defendant because Defendant's car had been weaving in its lane, and he suspected Defendant to be under the influence of alcohol. This Court concludes Defendant's weaving was a specific and articulable fact that justified an investigative stop.

Further, in reviewing the reasonable suspicion determination, the court must look at the totality of the circumstances of the case to determine whether the detaining officer had the particularized and objective basis for suspecting legal wrongdoing. *United States v. Arvizu*, 534 U.S. 266, 273 (2002). In this case, the totality of the circumstances included both the weaving in the lane and the driving below the posted speed limit. Officer Stanley testified both of these were NHTSA cues of nighttime driving impairment. The weaving in the lane and the driving below the posted speed limit were thus specific and articulable facts that led Officer Stanley to suspect Defendant was driving under the influence of alcohol and thus justified an investigative stop.

The fact that the trial court ultimately concluded Defendant did not violate A.R.S. § 28–701(E) did not negate Officer Stanley's statutory right to stop and detain Defendant to investigate a *suspected* violation of the traffic laws. As stated by the Arizona Supreme Court:

Moreover, when the police make an arrest based upon probable cause, it is not material that the person arrested may turn out to be innocent, and the arresting officer is not required to conduct a trial before determining whether or not to make the arrest.

*Cullison v. City of Peoria*, 120 Ariz. 165, 168, 584 P.2d 1156, 1159 (1978). Thus, the trial court's determination that Defendant did not violate A.R.S. § 28–701(E) did not negate Officer Stanley's reasonable suspicion that Defendant did violate the traffic law.

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III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court properly denied Defendant's Motion To Suppress.

**IT IS THEREFORE ORDERED** affirming the judgment and sentence of the Scottsdale Municipal Court.

**IT IS FURTHER ORDERED** remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.

**IT IS FURTHER ORDERED** signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen

THE HON. CRANE MCCLENNEN  
JUDGE OF THE SUPERIOR COURT

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